

**REMARKS**

Claims 6-14, 22, 23 and 26-31 are pending in this application. By this Amendment, claims 6-8, 10, 12, 14 and 22 are amended, claims 1-5, 15-21, 24 and 25 are canceled, and claims 27-31 are added.

Claim 6 is amended to recite "wherein the composition ratio of plant sterol to egg yolk lipoprotein in the complex is 5 to 232 parts by mass of plant sterol per 1 part by mass of egg yolk lipoprotein." Support for this amendment may be found in canceled claim 3, paragraph [0040] and Example 1, specifically Table 1 and paragraph [0068].

Claims 6-8 and 14 are amended to recite active steps, as suggested by the Patent Office.

Claims 12 and 22 are amended for clarity.

New claims 27-31 recite subject matter that may be found at least at paragraphs [0014], [0022], [0022], [0051] and [0085]-[0088], respectively.

No new matter is added.

**Rejections Under 35 U.S.C. §112, Second Paragraph**

Claims 2 and 6-14 are rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite.

Claim 2 has been canceled

Claims 6-8 and 14 have been amended to recite active steps, consistent with the Patent Office's suggestion.

Claims 7 and 8 have been amended to eliminate the term "and/or" consistent with the Patent Office's suggestion.

The above amendments are believed to overcome the rejections under 35 U.S.C. §112, second paragraph.

Applicants therefore respectfully request withdrawal of the rejection.

**Provisional Rejection Under 35 U.S.C. §103(a)**

Claims 1-26 are provisionally rejected under 35 U.S.C. §103(a) as allegedly being obvious over copending U.S. Patent Application No. 10/559,677.

Copending U.S. Patent Application No. 10/559,677 qualifies as prior art only under 35 U.S.C. §102(e).

U.S. Patent Application No. 10/559,629 (the present application) and U.S. Patent Application No. 10/559,677 were, at the time the present invention was made, both owned by Q.P. Corporation.

Thus, in accordance with 35 U.S.C. §103(c), copending U.S. Patent Application No. 10/559,677 is not available under 35 U.S.C. §103(a).

Applicants respectfully request withdrawal of the provisional rejection.

**Rejection Under 35 U.S.C. §102(b)**

Claims 1 and 6 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Corliss (U.S. Patent No. 6,113,972).

Claim 1 has been canceled.

Corliss describes a phytosterol/protein complex including an amount of a protein constituent equal to between 20% and 90% by weight of the phytosterol/protein complex, and preferably the protein constituent is present in an amount equal to between about 70% and about 85% by weight of the phytosterol/protein complex (see column 5, lines 14-19).

Claim 6 as amended recites that the ratio of plant sterol to egg yolk lipoprotein in the complex is 5 to 232 parts by mass of plant sterol per 1 part by mass of egg yolk lipoprotein. The process of claim 6 thus requires a complex that includes at most, about 16.7% by weight of egg yolk lipoprotein.

Corliss thus fails to describe each and every feature of claim 6. Claim 6 is therefore not anticipated by Corliss.

Applicants respectfully request withdrawal of the rejection.

**Rejections Under 35 U.S.C. §103(a)**

**Relying Upon Corliss**

Claims 1, 3, 6-22 and 26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Corliss.

Claims 1, 3 and 15-21 have been canceled.

As discussed above, Corliss describes a phytosterol/protein complex including an amount of a protein constituent equal to between 20% and 90% by weight of the phytosterol/protein complex, and preferably the protein constituent is present in an amount equal to between about 70% and about 85% by weight of the phytosterol/protein complex.

Claim 6 recites that the ratio of plant sterol to egg yolk lipoprotein in the complex of the oil-in-water emulsified food product is 5 to 232 parts by mass of plant sterol per 1 part by mass of egg yolk lipoprotein. Thus, the method of claim 6 requires that the complex of includes at most about 16.7% by weight of egg yolk lipoprotein. Corliss therefore fails to describe each and every feature of claim 6.

The Patent Office has failed to articulate any reason or rationale as to why and how a person of ordinary skill in the art would have modified the phytosterol/protein complex of Corliss to have arrived at the method for producing an oil-in-water emulsified food product containing the complex recited in the method of claim 6.

Thus, the Patent Office has failed to set forth a *prima facie* case of obviousness.

Claim 6 is therefore not obvious over Corliss.

Applicants respectfully request withdrawal of the rejection.

Relying Upon References Identified In The Office Action As "Kawai"

Claims 1-5, 15-21, 24 and 25 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over four references collectively identified as "Kawai", namely Kawai '777 (U.S. Patent No. 7,635,777), Kawai '328 (U.S. Patent No. 7,041,328), WO 00/78162 (WO 162) and Kudou (U.S. Patent No. 7,160,569).

Claims 1-5, 15-21, 24 and 25 have been canceled.

Applicants respectfully request withdrawal of the rejection.

Allowable Subject Matter

Applicants gratefully acknowledge that claim 23 is allowable if rewritten in independent form. In view of the above, all claims are allowable.

**Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 6-14, 22, 23 and 26-31 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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